IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1864 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SIKANDARBHAI DADABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1864 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR HL JANI ASTT GOVT PLEADER for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2001

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondent Nos.1 to 3 and

Ms.P.J.Dawawala, learned advocate appearing on behalf of the respondent No.4. In the present petition, the petitioner has challenged the detention order dated 8th January, 2001 passed by the District Magistrate, Mehsana under the provisions of PBM Act. The grounds of detention has been supplied to the present petitioner and the petitioner was detained at District Jail Bhuj as Class - II detenu. However, according to the learned advocate Mr.H.R.Prajapati, the present petitioner has been thereafter transferred from Bhuj to Sabarmati Jail due to earthquake and at present the present petitioner is in Sabarmati Central Jail.

#. Learned advocate Mr.H.R.Prajapati appearing on behalf of the petitioner has submitted that though various contentions have been raised by the petitioner challenging the detention order but according to him, one ground is enough to vitiate the order of detention. He submitted that the contention has been raised by the present petitioner in ground [10] on page-11 of the petition that the document which has been supplied along with grounds of detention are illegible and he therefore, drawn attention on page Nos.4, 6, 10, 20, 22, 28, 30 and 99 of the compilation. Mr.Prajapati, learned advocate has submitted that these documents which were illegible, has been requested by the petitioner to the detaining authority on 28th February, 2001 while making the representation to the detaining authority which is at Annexure-D to the petition and the relevant aspect of demand of illegible document on page-28. Mr.Prajapati has also submitted that the detenu has requested to the detaining authority tu supply legible copy to the petitioner but despite this specific demand for supplying legible documents, no such legible documents have been supplied by the detaining authority to the petitioner. Therefore, according to the learned advocate Mr.Prajapati, this contention has been discussed by the division bench of this Court in case of POKHARAJBHAI MOHANBHAI CHANDEL VS. DISTRICT MAGISTRATE, SURAT reported in 1991 (2) GLR page 753.

#. Learned advocate Mr.H.R.Prajapati has further submitted that affidavit-in-reply which has been filed by the District Magistrate, Mehsana on page-40, wherein in pare-13 of the reply, the District Magistrate has given reply to the effect that these are the documents which referred to in ground - [10] by the petitioner are legible documents and therefore there is no need to supply again the legible documents to the present petitioner. Therefore, according to learned AGP Mr.H.L.Jani,, all the documents which are referred by the

petitioner as illegible documents but in reality, they all are legible document and therefore, the detention order cannot be vitiated on this count.

#. Learned advocate Mr.P.J.Dawawala, appearing on behalf of the respondent No.4, who has not filed any reply on behalf of the respondent No.4 but she has supported the detention order and she further submitted that the detaining authority after considering all the relevant materials on record, has passed legal and valid order of detention within provisions of PBM Act and therefore, no interference of this Court is required.

#. I have considered the submissions of all the learned advocates and have also personally verified the original documents and upon personal verification of page Nos.4, 6, 10, 20, 22, 28, 30 and 99, these are all documents, which are not completely legible documents and in my opinion, some of the portion of above documents are illegible. This fact has also been personally verified by the learned AGP Mr.H.L.Jani and he also did not dispute this fact that some of the documents are not properly legible document and some of the portion of each documents are not completely legible. After perusing all the documents, according to my opinion, the detaining authority has not supplied the legible documents to the petitioner. Not only that but no reply nor any explanation has been given by the District Magistrate, Mehsana that even on being specific demand made by the petitioner in his representation at page-28 to the effect that no legible documents have been supplied to the petitioner. Therefore, it amounts to denial of legal right to the petitioner for making an effective representation which ultimately violated provisions of Article 21 [5] of the Constitution of India. I have considered the decision of the Division Bench of this Court rendered in case of POKHRAJBHAI MOHANBHAI CHANDEL reported in 1991 (2) GLR page 753. The division Bench of this Court has observed that out of copies of documents supplied to the detenu, copy of one document found to be illegible then it amounts to infringing the right of the petitioner to make an effective representation and in such circumstances, the detention order liable to be set aside. The division bench of this Court has also considered the decision of the Apex Court in case of SHRI DHARMISHTHA BHAGAT VS. STATE OF KARNATAKA reported in 1989 Supplementary [2] SCC 155. Therefore after considering the decision of the division bench of this Court, according to my opinion, not to supply legible documents inspite of the demand made by the petitioner detenu is adversely affected the legal right of the

petitioner to make an effective representation and it also violated mandatory provisions of Article 22[5] of the Constitution of India.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 8th January, 2001 passed by the District Magistrate, Mehsana. The petitioner - detenu - SIKANDARBHAI DADABHAI SOLANKI is hereby quashed and set aside and he is is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 16-6-2001 [H.K.Rathod, J.]

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